

Orders file



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

**IN THE MATTER OF CLAIMS AGAINST THE
DEALER BOND OF MIDTOWN SALES AND
SERVICE**

Case No. 98-H-1104

FINAL DECISION

On October 15, 1998, Jacques F. LaVia filed a claim with the Wisconsin Department of Transportation against the motor vehicle dealer bond of Midtown Sales and Service. The claim along with the documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals for hearing.

An informal telephone hearing was conducted on April 12, 1999, Mark J. Kaiser, Administrative Law Judge, presiding. Participating in the telephone hearing were the claimant, Jacques LaVia, Jeffrey Mallon, proprietor of Midtown Sales and Services, Steven Reid, Senior Investigator, Dealer Section, Wisconsin Department of Transportation, Lisa Frasier, claims representative for Old Republic Surety Company, and Jim Baker representing Western Surety Company. The Administrative Law Judge issued a Preliminary Determination on April 29, 1999. No objections to the Preliminary Determination were received. Pursuant to sec. Trans 140.26(5)(d), Wis. Adm. Code, the Preliminary Determination is adopted as the final decision of the Department of Transportation.

FINDINGS OF FACT

1. Jeffrey Mallon, d/b/a Midtown Sales and Service, (dealer) was a used motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to sec. 218.01, Stats. The dealer's facilities were located at 120 North Front Street, Coloma, Wisconsin.

2. The dealer has had a surety bond in force from September 9, 1993, to the present date. (Bond #576984 from Capitol Indemnity Corporation, Madison, Wisconsin from September 9, 1993 to October 25, 1995; Bond #SU09461801 from Old Republic Surety Company, Brookfield, Wisconsin from September 9, 1995 to November 16, 1997; and Bond #68641666 from Western Surety Company, Sioux Falls, South Dakota from September 9, 1997 to the present.) The dealer went out of business on April 1, 1998.

3. On November 29, 1996, Jacques LaVia purchased a 1989 Chevrolet Caprice station wagon, Vehicle Identification Number 1G1BN81Y3KA148663, from the dealer. The vehicle was sold with a limited six month warranty covering the engine and transmission.

4. On the Used Vehicle Disclosure Label (UVDL) prepared by the dealer, the dealer disclosed no problems with the vehicle. The dealer disclosed the mileage of the vehicle as 9090 miles and indicated that this mileage was in excess of the mechanical limits of the odometer (Exh. Z11). It is disputed whether the UVDL was displayed in the window of the vehicle as required. However, it is undisputed that Mr. LaVia saw and signed the label and that he was aware that the vehicle had in excess of 100,000 miles on it when he purchased it.

5. In December, 1996, Mr. LaVia took the vehicle back to the dealer complaining that the engine was either burning or leaking oil. Mr. Mallon agreed to fix the vehicle but indicated he did not have the money to do so at that time. In May, 1997, the dealer did rebuild the engine. However, when Mr. LaVia picked the vehicle up the engine was "knocking." Mr. LaVia took the vehicle back to the dealer. The dealer stated he would look for another engine to put into the vehicle. However, the dealer did not perform any additional work on the vehicle and eventually went out of business in April, 1998.

6. After the dealer went out of business, Mr. LaVia purchased a 1986 Olds Delta 88 for \$350.00 and had the engine from that vehicle put into the vehicle he purchased from the dealer. The charge for labor to have the engine put into the purchased vehicle was \$372.16. The total cost to Mr. LaVia to replace the engine in the purchased vehicle was \$722.16. On June 29, 1998, Mr. LaVia filed a complaint against the dealer with the Department of Transportation.

7. The Department of Transportation Dealer Section investigated the complaint but no resolution of the complaint was accomplished. On October 15, 1998, Mr. LaVia filed a claim against the dealer's bond. The claim is in the amount of \$1500.00. Mr. LaVia did not itemize his claim; however, in subsequent correspondence, he indicated that this amount included the cost of replacing the engine in the purchased vehicle and the balance of the claim was compensation for the inconvenience he suffered.

8. After the sale of the vehicle to Mr. LaVia, the dealer completed the odometer statement on the Application for Title/Registration (MV-11) incorrectly. On the purchaser's copy of the MV-11 the space for outgoing mileage is blank and on the copy submitted to the Department of Transportation the outgoing mileage is listed at 9,283 miles and is noted as the actual mileage when it should have been noted as in excess of mechanical limits. The incorrect completion of the MV-11 form is a violation of sec. 342.155(1), Stats.

9. The dealer gave Mr. LaVia a six-month guarantee on the engine and transmission of the vehicle. However, the warranty was not in a form that satisfies the requirements of sec. Trans 139.06, Wis. Adm. Code.

10. Mr. LaVia's claim arose on November 29, 1996, the date he purchased the vehicle from the dealer. On November 29, 1996, the surety bond issued by Old Republic Surety

Company was in effect. The bond claim was filed within three years of the ending date of the period the Old Republic Surety bond was in effect and is; therefore, a timely claim.

11. Mr. LaVia sustained a loss in the amount of \$722.16 (the cost of replacing the engine in the purchased vehicle). However, the loss sustained by Mr. LaVia was not caused by an act of the dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is not allowable.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Chapter Trans 140, Subchapter II, Wis. Adm. Code. Sec. Trans 140.21(1), Wis. Adm. Code, provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3) (a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats.

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow Mr. LaVia's claim, a finding must be made that Midtown Sales and Service violated one of the sections of sec. 218.01(3)(c), Stats., listed in sec. Trans 140.21(1)(c)1, Wis. Adm. Code, and that the violation caused the loss sustained by Mr. LaVia. An investigator for the Department of Transportation concluded that Midtown Sales and Service violated sec. 342.155(1)(a), Stats., and sec. Trans 139.06, Wis. Adm. Code, in this transaction.

Sections 342.155(1)(a) and (b), Stats., provide:

(a) Unless exempted by rule of the department, no transferor may transfer ownership of a motor vehicle without disclosing the vehicle's mileage in writing to the transferee by specifying the odometer reading. The disclosure shall state either that the

reading is known to be actual mileage, or that the reading is not the actual mileage and should not be relied upon, or that the reading reflects the mileage in excess of the designed mechanical limit

(b) The mileage disclosure statement required under par. (a) shall be made in the spaces provided on the certificate of title or on a form or in an automated format authorized by the department. The transferee shall print his or her name on the mileage disclosure statement, sign the statement and return a copy of the statement to the transferor. Except as authorized by rule of the department, no person may sign a mileage disclosure statement as both the transferor and transferee in the same transaction.

Section Trans 139.06(1), Wis. Adm. Code, provides in relevant part:

If a sale of a motor vehicle by a licensee is made subject to a warranty, the warranty shall be in writing and shall be provided to the purchaser at the time of delivery of the vehicle and shall include [specific] items:

A violation of either sec. 342.155(1), Stats., or sec. Trans 139.06, Wis. Adm. Code, would in turn be a violation of sec. 218.01(3)(a)4 and/or 14, Stats. The dealer, in this transaction, did perform acts that would be grounds for the suspension or revocation of his motor vehicle dealer license. However, these acts did not cause the loss sustained by Mr. LaVia. Mr. LaVia was aware that the vehicle had in excess of 100,000 miles on it at the time he purchased it. The mileage was properly disclosed on the UVDL and Mr. LaVia testified at the hearing that he insisted on a guarantee for the engine and transmission because he was aware that the vehicle had in excess of 100,000 miles on the engine. Therefore, the fact that the odometer statement on the MV-11 form was incorrectly completed did not mislead Mr. LaVia.

With respect to the failure of the dealer to properly put the warranty in the form required by sec. Trans 139.06, Wis. Adm. Code, this failure was also not responsible for Mr. LaVia's loss. The dealer is not denying that he gave Mr. LaVia a warranty and did not refuse to perform repairs according to the warranty. The problem in this case is that Mr. LaVia was not satisfied with the quality of the repair work performed. This is potentially a breach of contract case but is not a situation covered under any of the sections of 218.01(3)(a), Stats., listed in sec. Trans 140.21(1)(c), Wis. Adm. Code, or any of the provisions of Ch. Trans 139, Wis. Adm. Code. The Department of Transportation does not regulate the quality of repair work done by dealers

CONCLUSIONS OF LAW

1. Jacques LaVia's claim arose on November 29, 1996, the date he purchased the subject vehicle from Midtown Sales and Service. The surety bond issued to Midtown Sales and Service by Old Republic Surety Company was in effect at this time. The claim arose during the period covered by the surety bond.

2. Mr. LaVia filed a claim against the motor vehicle dealer bond of Midtown Sales and Service on October 15, 1998. The bond claim was filed within three years of the last day of

the period covered by the surety bond; therefore, pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Code, the claim is timely.

3. The loss sustained by the Mr. LaVia was not caused by an act of Midtown Sales and Service which would be grounds for the suspension or revocation of its motor vehicle dealer license; therefore, pursuant to sec Trans 140.21(1)(c), Wis. Adm. Code, the claim is not allowable.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Jacques LaVia against the motor vehicle dealer bond of Midtown Sales and Service is DENIED.

Dated at Madison, Wisconsin on June 3, 1999.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: Mark J. Kaiser
MARK J. KAISER
ADMINISTRATIVE LAW JUDGE